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Governor



STATE OF WASHINGTON

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February 12, 2013

The Honorable Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Dear Attorney General Holder:

Following our meeting on Washington's voter-approved Initiative 502 (I-502), I want to update you on the strategies under consideration to ensure the development of a highly regulated system designed to prevent diversion of marijuana across state borders.

In addition, I have made it abundantly clear to all who have asked that you have not expressed the federal government's intentions in any way concerning the implementation of I-502.

The Washington State Liquor Control Board (WSLCB) is the agency responsible for crafting the producer, processor and retailer regulations. Enclosed you will find a summary of I-502 prepared by the WSLCB and their current timeline for drafting rules to implement the initiative. I have instructed the WSLCB that our approach must be thorough and disciplined, with public safety being our paramount responsibility. I am personally committed to having a well-regulated, disciplined system with tight inventory controls and close coordination with law enforcement. Our system will closely track the marijuana produced through retail sale to prevent diversion. The system will be designed in a way to prevent marijuana produced in Washington from being sold in other states.

The WSLCB is in the early stages of rulemaking for I-502 implementation. While it is too early to say definitively what will be included in the rule, our goals include creation of a system that minimizes the illicit market through price, access and convenience while simultaneously controlling the product.

Below are some of the actions under way and ideas under consideration in Washington State to regulate the production, processing and retail purchasing of marijuana as I-502 is implemented.

INITIATIVE RESTRICTIONS

Public Consumption Prohibited. The initiative makes it unlawful to open a package containing marijuana, usable marijuana or a marijuana-infused product, or to consume marijuana, usable marijuana or a marijuana-infused product in view of the public. Additionally, Washington prohibits smoking in public places (bars, restaurants, etc.). The prohibition on smoking in public places would apply to smoking marijuana. This prohibition extends to places of employment, such as private clubs.



Production, Processing and Retail Sale only within Washington. Licensed producers, processors, and retailers must be located within Washington State. Under section 17 of I-502, a licensed producer may only produce or possess quantities of marijuana which do not exceed limits set by the WSLCB and only licensed producers may grow marijuana for recreational purposes. Under Section 16 of I-502, a processor may only purchase or receive marijuana properly packaged and labeled from a licensed producer. Under Section 15 of I-502, a licensed retailer may only purchase or receive marijuana or marijuana products that have been properly packaged and labeled from a licensed processor. Every licensee must be in compliance with the rules established by the WSLCB and may only have amounts on premises as determined by the WSLCB. Any licensee who is not in compliance with the initiative or rules of the WSLCB is subject to potential arrest and prosecution under the Washington Uniform Controlled Substances Act. Initiative 502 only exempts licensees from criminal and civil penalties under Washington law if the licensee or individual is in compliance with the applicable statutes and rules. Similarly, individuals are only exempt from Washington criminal and civil laws if they are in compliance with the laws established by Initiative 502.

Retail sales only within Washington. Under Section 4 of I-502, licensees may only operate within Washington. Under Section 15 of I-502, a licensed retailer is only exempt from Washington criminal and civil laws if, among other things, the deliver, distribution, and sale occur on the premises of the retail outlet to persons 21 years of age or older within allowable amounts.

Age Restrictions. The initiative specifically prohibits possession or consumption by individuals under the age of 21. No person under the age of 21 may be issued a producer, processor, or retailer license and no employee may be under the age of 21.

Driving Under the Influence of Marijuana. Initiative 502 creates a presumptive level of impairment for operation of a motor vehicle under the influence of marijuana. The presumptive level for individuals 21 years of age and over is a THC concentration level of 5.00 nanograms per milliliter of blood. The presumptive level for individuals under the age of 21 is 0.00 nanograms per milliliter of blood.

DEVELOPING EXPERTISE

Marijuana Consultant. The WSLCB recently issued a nationwide request for proposals for a marijuana consultant or consultants. Key among the consultant's responsibilities will be to provide technical expertise on validating consumption levels in Washington. By having the best possible data on consumption in our state, the amount of marijuana to be produced without exceeding market demand can be determined. The consultant will be an active partner as the WSLCB crafts regulations to govern the system.

Communication with Colorado. Washington state agencies are engaged with Colorado state officials about Colorado's sophisticated system of regulating medical marijuana. The Colorado medical marijuana system is a tightly controlled "seed to sale system" that uses barcodes to electronically track each step of the plant's progress to market. Officials in that state have indicated their system is substantially effective for tracking purposes.

Private Sector Experience. In addition to Colorado, there are other examples of the digital tracking of controlled products. For example, we are looking at traceability models that the food industry uses to track products for recalls. In Washington, apples can be traced from individual orchards, through packing houses and distributors, and ultimately to market. Each bin, box or individual apple can be

tagged with a unique identifier that allows it to be traced back to its origin. We will continue to reach out to our private partners to learn from other systems.

Open, Transparent Process. The WSLCB is in the process of conducting a series of public hearings across the state on the proposed regulations.

SAFEGUARDS IN RULEMAKING

As the WSLCB creates its rules, it will closely examine options in the following areas.

Criminal Background Checks. The WSLCB currently performs background checks of potential licensees using the Criminal History Records Information system. In addition, investigators search for hidden ownership. The WSLCB is likely to expand the background checks to include fingerprinting for the applicant in addition to other parties of interest. If fingerprinting is instituted, the process will access both the Washington State Patrol and FBI databases to ensure a nationwide search.

Washington uses a point system to set standards for denial or revocation of liquor licenses based on criminal history. In Colorado, a lifetime ban for convicted drug felons is imposed. Colorado also uses a “moral standard” for denying applicants with several misdemeanors. Washington will be reviewing Colorado’s system to determine whether adding elements of its system to Washington’s is appropriate.

Inventory Control. Through rulemaking, the WSLCB will set standards for building the inventory control structure. The WSLCB is responsible for setting standards to control the amount of marijuana that will be grown, processed and retailed in Washington. It is required to set security standards, limit the number of retail outlets and establish limits for the maximum amount of marijuana and marijuana-infused product that will be allowed at each tier of the system. Consumption research will help determine the amount needed to meet demand without creating substantial overproduction. Tight inventory controls and clear rules for unused product will be critical.

Packaging and Labeling. The WSLCB will establish standards for packaging and labeling all marijuana products that are produced by this regulated industry. This will assist the WSLCB and local law enforcement officials to identify legally produced product and assist in the overall control structure.

Record Keeping and Audits. Maintaining accurate records and imposing strict penalties for noncompliance are essential for tracking product. The WSLCB will work with the state Department of Revenue to develop audits to identify reporting discrepancies.

Transportation Controls. The rules on transporting marijuana between the tiers in the system are also a consideration for rule making. The WSLCB may require strict rules and record keeping that govern how marijuana is transported to verify that the amount shipped from one tier was actually received at its destination.

LAW ENFORCEMENT

To prevent Washington State from becoming the country’s export market for marijuana, law enforcement agencies must vigorously enforce the criminal aspects of I-502. Simply put, non-licensed growing, cultivation and distribution remain illegal under state law.

One of the goals of I-502 was to reduce criminal activity associated with illicit marijuana distribution. Given the revenue implications of I-502, there is reason to believe that local governments will invest in

stopping the unlicensed illegal distribution of marijuana and illegal distribution will remain at least as high a priority as it was prior to passage of the initiative.

Washington has a long history of positive, cooperative relationships among federal, state and local law enforcement and will continue engaging in cooperative efforts to address diversion of marijuana. Below are examples of law enforcement activities that Washington employs today and would continue to use under a legalized system of marijuana.

Marijuana Eradication. To prevent the proliferation of illegal marijuana “grows,” law enforcement must build on the eradication success we have had here. In 2009, more than 600,000 marijuana plants were eradicated in Washington. By 2012, that number dropped to 200,000 plants. Washington has been successful by adopting a zero-tolerance approach to marijuana grows that are not covered under the medical marijuana law. Funding and assistance from the DEA’s Domestic Cannabis Eradication and Suppression Program, the Office on National Drug Control Policy’s National Marijuana Initiative and the Northwest High-Intensity Drug Trafficking Area have contributed to this success.

Criminal Interdiction. High-volume traffic stops with roadside interviews have proven an extremely effective method in reducing contraband being transported on our nation’s highways. This is evident in the Office on National Drug Control Policy support of the Domestic Highway Enforcement program in Washington State, in which our state is a robust participant. This, among many other statewide interdiction efforts, enables law enforcement to disrupt distribution networks of drug trafficking organizations. These activities also disrupt attempts to distribute legalized marijuana to neighboring states.

Disruption and Dismantlement of Drug Trafficking Organizations. Washington State remains an attractive target for drug trafficking organizations (DTOs). In 2011, High-Intensity Drug Trafficking Area task forces disrupted and dismantled 52 DTOs. Most of these are poly-drug organizations that traffic in multiple drugs, including marijuana; they may also engage in money laundering. Federal, state, local and tribal law enforcement need to maintain a strong partnership through the Byrne Grant and the Organized Crime Drug Enforcement Task Force programs to minimize the impact of DTOs.

Experience with Contraband Cigarettes. The tax on tobacco in Washington State is among the highest in the nation. This creates an incentive for illegal importation and sale. We know on-site and unannounced audit/investigations related to invoicing and business records have been an important tool in tobacco tax enforcement. Learning from the tobacco tax experience, we must consider effective controls for marijuana to identify contraband product and ensure license holders are not allowing their products to be exported.

Agency Collaboration. As governor, I am obligated to carry out the will of Washington voters. Clearly, the world is watching the states of Colorado and Washington as their initiatives are implemented. We intend to do it right. My office will be working closely with the WSLCB and the Washington State Patrol to minimize diversion and the illicit market. In addition, as governor, I am calling on the expertise of several state agencies — the Gambling Commission, Department of Revenue, Department of Financial Institutions, Department of Agriculture and others — to lend their expertise and prevent diversion.

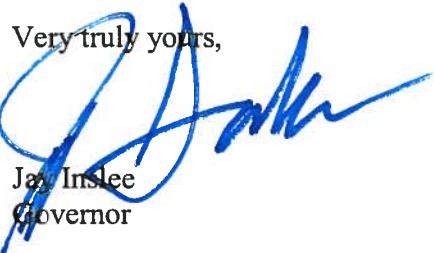
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Thank you for your consideration of our plans as they relate to the crucial prioritization of law enforcement resources you must consider in these fiscally challenging times. I look forward to our next discussion.

Very truly yours,


Jay Inslee
Governor

Enclosures



Washington State Liquor Control Board

Fact Sheet

Initiative 502's impact on the Washington State Liquor Control Board

Summary

Initiative 502 would license and regulate marijuana production, distribution, and possession for persons over 21; remove state-law criminal and civil penalties for activities that it authorizes. Tax marijuana sales and earmark marijuana-related revenues. The new tightly regulated and licensed system would be similar to those used to control alcohol.

Licenses and Fees

Creates an application process that mirrors the liquor license application process

Creates three new marijuana licenses: producer, processor, and retailer. The fee for each license is a \$250 application fee and \$1000 annual renewal fee.

- Marijuana Producer: produces marijuana for sale at wholesale to marijuana processors and allows for production, possession, delivery, distribution.
- Marijuana Processor: processes, packages, and labels marijuana/marijuana infused product for sale at wholesale to marijuana retailers and allows for processing, packaging, possession, delivery, distribution.
- Marijuana Retailer: allows for sale of useable marijuana/marijuana infused products at retail outlets regulated by the WSLCB.

The initiative allows the WSLCB to charge fees for anything done to implement/enforce the act. For example, fees could be charged on sampling, testing, and labeling that would be the cost of doing business as a licensee

Marijuana Taxes

The initiative creates three new excise taxes to be collected by the WSLCB:

- Excise tax equal to 25% of the selling price on each sale between licensed producer and licensed processor. Paid by the producer.
- Excise tax equal to 25% of the selling price on each sale of usable marijuana/marijuana infused product from a licensed processor to a licensed retailer. Paid by the processor.
- Excise tax equal to 25% of the selling price on each licensed retail sale of usable marijuana/marijuana infused product. Paid by the retailer. **This tax is in addition to any/all applicable general, state, and local sales and use taxes, and is part of the total retail price.**
- All funds from marijuana excise taxes are deposited in the Dedicated Marijuana Fund. Disbursements from the Dedicated Marijuana Fund shall be on authorization of the WSLCB or a duly authorized representative.

Initiative 502 allows for the WSLCB to enact rules that establish procedures and criteria for:

- The equipment, management and inspection of production, processing, and retail outlets.
- Books and records maintained by licensed premises.
- Methods of producing, processing and packaging of marijuana/marijuana infused products, to include conditions of sanitation.

- Standards of ingredients, quality, and identity of marijuana/marijuana infused products produced, processed and sold by licensees.
- Security requirements for retail outlets and premises where marijuana is produced and processed.

Retail Outlets

Specific number of retail outlets and licenses will be determined by the WSLCB in consultation with the Office of Financial Management taking into account population, security and safety issues, and discouraging illegal markets. The initiative also caps retail licenses by county.

- Retail outlets may not employ anyone under the age of 21, nor allow anyone under the age of 21 to enter the premises.
- Retail outlets are only authorized to sell marijuana/marijuana products or paraphernalia.
- Retailers are allowed one sign identifying the outlet's business or trade name, not to exceed 1600 square inches.
- They are not allowed to display marijuana or marijuana related products in a manner that is visible to the general public.

Possession

If enacted, individuals twenty-one years of age or older are legally authorized to possess and use marijuana-related paraphernalia and any combination of:

- One ounce of useable marijuana;
- 16 ounces of marijuana infused product in solid form; or
- 72 ounces of marijuana infused product in liquid form.

Individuals will still be subject to criminal prosecution for:

- Possession in amounts greater than what is listed above.
- Possession of any quantity or kind of marijuana/marijuana infused product by a person under 21 years of age.

Price

The Office of Financial Management places a **price estimate of \$12 per gram**. Medicinal marijuana dispensary prices on average range between \$10 and \$15 per gram with some premium products exceeding \$15 per gram.

Based on average retail mark-up practices, estimated producer price is \$3 per gram and estimated processor price is \$6 per gram.

Timeline

- November 6, 2012: Public vote on Initiative 502.
- December 6, 2012: Initiative 502 goes into effect (30 days after general election).
- December 1, 2013: Deadline for the WSLCB to establish the procedures and criteria necessary to implement the initiative.

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Washington State Liquor Control Board

Tentative I-502 Implementation Timeline

January 9, 2013

Over the coming year the Washington State Liquor Control Board will address the challenges and tasks associated with transforming Initiative 502 from a ballot measure into a reality. In order to keep the public updated and involved in the process we are releasing this tentative timeline of significant milestones.

It is important to remember that this timeline is tentative due to a variety of external factors outside the WSLCB's control that may influence deadlines. Instead, this is intended to provide ballpark expectations for various implementation milestones. If and/or when timeframes change we will communicate those changes via the [WSLCB Listserv](#) and our agency [Twitter](#).

Date	Milestone
Early-December	Rulemaking process begins with the filing of the CR101 for the Producer License .
Early-January	Request for Proposals (RFP) for technical consultation issued. A RFP is a competitive process in which experts may bid their services to the WSLCB.
Mid-January	Request for Proposals for Marijuana Consultant Issued* (see separate timeline for RFP timing).
Late-January	The WSLCB begins holding forums in regions around Washington to allow public comment on aspects of the law.
Early-March	CR101 filed for both the Processor and Retailer licenses allowing the public to give input on how the requirements/language for those licenses should look.
Mid-April	CR102 filed for the Producer License. The CR102 allows the WSLCB to seek public comment on its initial draft rule language.
Late-May	Public hearing on rules for the Producer License.
Early-June	CR103 filed for Producers License. The CR103 is when the Board officially adopts the proposed rules. They will become effective 31 days later.
Early-June	Begin accepting Producer License applications.
	CR102 filed for both the Processor and Retailer licenses. This allows the WSLCB to seek public comment on draft rule language developed with input from the public during the initial comment period.
Late-July	Public hearings for Processor and Retailer licenses draft rule language,
	CR103 filed for Processor and Retailer licenses. The CR103 is when the Board officially adopts the rules. They will become effective 31 days later.
Early-August	Rules relating to the Producer and Retailer licenses completed.
Mid-August	WSLCB begins issuing producer licenses to qualified applicants.

Early-September	WSLCB begins accepting Processor License applications.
Mid-September	WSLCB begins accepting Retailer License applications.
Early- November	WSLCB begins issuing Processor Licenses to qualified applicants.
Mid-November	WSLCB begins issuing Retailer Licenses to qualified applicants with an effective date of Dec. 1, 2013.
December 1, 2013	Retailer licenses become effective.

As always, for more information on the implementation of Initiative 502, please visit our website at www.liq.wa.gov.

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